

97-84001-23

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Progressive politics

Salt Lake City

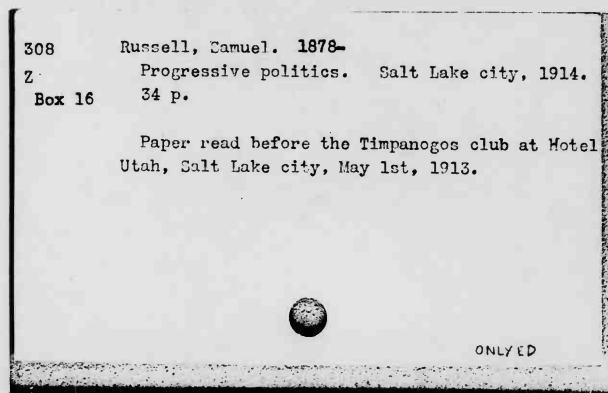
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# Progressive Politics.

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By

SAMUEL RUSSELL

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SALT LAKE CITY  
1914

The following is the text of a paper read before  
the Timpanogos Club at Hotel Utah,  
Salt Lake City, May 1st, 1913.

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17 Nov. 1914 - MS.

## Progressive Politics.

The game of progressive politics as played between squaredealers and standpatters has in these times engaged much public attention. But politics is not properly a game. Politics is the science of public policy. It had its origin in the first organized communities which for the purposes of trade or fabrication formed themselves as distinct bodies politic at advantageous places along trade routes or rivers. These were the first towns or cities. And the free persons who had liberated themselves from the bonds and services of feudalism were the citizens or burghers of the walled municipalities which had become independent of the feudal lords.

As trade and commerce developed and gathered wealth to the cities, the importance of these political communities became enlarged and the principles of policy fostered and developed in the free towns finally broke down the influence and power of the feudal structure by which the towns were surrounded. The abolition of land tenure based on homage, the political emancipation of the serfs, and the extension of the principles of liberty and law into the political structure of society, were all gradations in the evolution which has substituted the rule of laws for the rule of lords, and which has had its most perfect fruition in the political institutions of our own United States of America.

The American ideal of Government was written by Thomas Jefferson into the Declaration of Independence July 4, 1776, in these words:

"That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights gov-

ernments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

This same ideal is thus expressed by George Mason in the Virginia Bill of Rights, June 12, 1776:

"That all men are by nature equally free and independent and have certain inherent rights of which when they enter into a state of society, they can not by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

But however true this ideal may be, we must not forget that governments have been evolved out of the struggles and experience of the human race. They have not been created out of hand by political philosophers. Political institutions and laws are distinctively the product of man's intellect and reason guided always by the light gained from political experience. For governments and laws have to deal with human conduct. They are for the government of the people, all the people. They are meant to supplant the personal rule of lords and autocrats, and to have their sanction in reason rather than in force. Indeed the great achievement of civilization has been the subjugation of the unlawful use of force and this notable achievement has been contemporaneous with the development and extension of jurisprudence and law based upon the recognition and security of personal liberty, property, and rights—the liberty of every man to rule himself and that which is properly subject to his dominion. The capacity of man to enjoy and perpetuate these principles is in direct proportion to his capacity to use reason and restraint, and to voluntarily subject himself to the rule of justice as expounded in rational and equitable laws. It is a noble thing to contemplate the justice of God, but there is no justice in this world, except as it is conceived in the mind and applied in the acts of men. And while the ulti-

mate principles of justice are as we like to believe, immutable and eternal, yet the human conception of them is limited and imperfect; but throughout long experience we should obtain clearer visions and views of the ultimate justice which should ever be held up as the ideal to which all our political aspirations should be directed and by which we should test, adjust, and correct whatever may be discovered as defective in the practical operation of our political and administrative functions.

#### Purposes of Constitutional Government.

These ideals in their practical aspects are thus stated in the preamble to the Constitution of the United States:

"To establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity."

And they are epitomized in the maxim, "*Salus populi suprema lex*"—the welfare of the people is the supreme law. This is of the very essence of republican government. It is to be observed, however, that our maxim reads "the welfare of the people" and not the "rule of the people"—is the highest law and the proper ideal of political society. I know that Abraham Lincoln, with beautiful alliteration in his famous Gettysburg address of Nov. 19, 1863, characterized our government as "of the people, for the people, and by the people," and while I would not depreciate the popular thought thus expressed in popular phrase, yet it may be said that the superficial impression of these words rather tends to obscure in the public mind the true nature and function of government. The purpose and function of government is not that the people may rule, but rather to establish and administer justice, and to promote the common welfare of the people.

The body of constitutional government consists of its system of organic and supplementary laws and statutes. Without these, constitutional government as such can not in the nature of things exist. The people may and do ordain and constitute the government, and by their acts

and constitutions give it organic and corporate being. But once constituted, the government in the performance of its functions necessarily requires magistrates, trustees, and functionaries who must look to the law rather than to the people for the sanction of their acts. You may have government or you may not have it. You can not have it when the direct will of the people is substituted for the acts of magistrates and ministers of law and justice. The practical question is, shall magistrates administer the law, or shall they administer their own wills?

#### **Lex Majoris Partis.**

Now, there is nothing inherently sacred in the rule of the people—that is to say, in the rule of the major part of the people or in the *lex majoris partis*,—or the rule of a majority, as it is called. This rule arises from practical necessity rather than in sound sense and reason. The ideal rule would be the rule of wisdom and justice—not the rule of the major numbers; for one man may be right against a multitude, and the man who has a true conception of righteousness is more nearly right than a multitude who may not have had their minds open to the clearer views of right. These matters are in their practical aspects questions of opinion, and opinions ought properly to be weighed rather than counted. But the rule of the majority exists from the necessity of the case, and after all it is but the translation of the principle of the rule of force into the realm of civil government. In the older day controversies were not decided by the application of rules and principles of justice, but by contest and battle. The party with the larger force or the larger number of men would win the battle by the exercise of brutal force. If a poll were taken of the opposing parties it would be known in advance to whom the victory in the ordinary course of nature and events would ultimately come. Man for man, the side having the most men would win. Not that the major party would be right but because only that it was the more powerful. Might is inherent—right is ideal, the conception of man's intellect and ideality. Now,

as a practical matter, it is preferable to abide by the rule of the majority—it is less wasteful of life and property to count heads than to fight—hence we take a poll, and the party which has the most heads wins. The same result would be obtained by battle, but there would be great losses sustained by both parties in the number that should fall in the conflict. It were indeed better that controversies could be settled by consent and agreement, that a nation should be united rather than divided into parties, but when decisions must be reached upon matters in disagreement, the necessities and nature of the case require that the greater number shall preponderate in the scale and carry the balancing point. There is no inherent virtue in partisanship. The division of the people into sects and parties can not be justified for its own sake. And while parties naturally arise from conflicting and diverse interests and opinions in society, they ought not to be encouraged for the mere purpose of perpetuating division and political sectarianism among the people. We shall only progress toward our ideal as we temper the necessary rule of the major party with moderation and a recognition of established rights. As is tersely stated by Alexander Hamilton:

"There can be no such thing as rights, no such things as property or liberty; all the boasted advantages of a constitution of government vanish into air, if everything must float on the variable and vague opinions of the governing party of whomsoever composed."

"Among the extravagancies with which these prolific times abound, we hear it often said that the constitution, being the creature of the people, their sense with respect to any measure, if it even stand in opposition to the constitution will sanctify and make it right. \* \* \* The doctrine serves to undermine all those rules by which individuals can know their duties and their rights, and to convert the government into a government of will and not of laws."

#### **National Incapacity for Constitutional Government.**

As practical objects of the incapacity of some nations for self government by laws and constitutions, we have only to have observed the conduct of the people of Mexico

within the last few years. The mass of this nation have been fit subjects for suppression and superstition. Undisciplined of mind, and unrestrained of will, they have not developed those public virtues necessary for the exercise of a republican form of government. Yet there are those among us—leaders of our politics, too—who quote the Declaration of Independence as proof that such people have the inherent right of self government and ought not to be subjected to any government to which they have not given their consent. It was the very author of the Declaration of Independence who said of these Latin American races—writing to Edward Everett under date of March 27, 1824—in the very evening of his long and eventful political experience:

"I confess I have the same fears for our South American brethren; the qualifications for self government in society are not innate. These are the result of habit and training, and for these, they will require time and probably much suffering."

In other letters Jefferson said:

"I fear, too, that the Spaniards are too heavily oppressed by ignorance and superstition for self government, and whether a change from foreign to domestic despotism would be to their advantage, remains to be seen." (Letter to Samuel Brown, July 14, 1813.)

"Another great field of political experiment is opening in our neighborhood in Spanish America. I fear the degradation into which their priests and kings have sunk them has disqualified them from the maintenance or even knowledge of their rights, and that much blood must be shed for little improvement in their condition. Should their new rulers honestly lay their shoulders to remove the great obstacles of ignorance and press the remedies of education and information, they will still be in jeopardy until another generation comes into place, and what may happen in the interval can not be predicted, nor shall you or I live to see it." (Letter to Dupont DeNemours, April 15, 1811.)

"Spanish America is all in revolt. The insurgents are triumphant in many of the states and will be so in all. But there the danger is that the cruel acts of their oppressors have enchained their minds and kept them in the ignorance of children and as incapable of self

government as children. After the obstacles of bigotry and priestcraft can be surmounted, we may hope that common sense will suffice to do everything else. God send them a safe deliverance." (Letter to Thaddeus Kosciusco, April 13, 1811.)

#### American Statesmanship.

Now I may be permitted to say that I have a profound respect for the statesmanship of the men who established the independence and political constitution of our country. I believe in the soundness and inherent merit of their great organic work. They laid the foundation and it is for us to build upon it, and develop it, but in doing so we should always keep in view the essentials of the original design. I believe that our revolutionary period produced the greatest association of sound political thinkers that have appeared at any age of the world's history, and that all of our national problems can be adjusted without a repudiation of the great work of the statesmen who founded the republic.

I believe in the American system, in its development and evolution as an organic whole, and without trying to impart into it principles and policies which have developed on foreign soil and under systems of law and politics quite different from our own. I don't like the initiative and referendum. I don't like the sound of it. It is foreign and exotic—all right for the Swiss people who have developed it, but a strange and unfit thing when fastened on to our institutions to which it has no proper relation. Not that I am opposed to the idea—the idea is correct, but I prefer its application in the American form and think it were better to develop the American idea than to adopt these strange things from over seas. With the great influx of European immigration, we are in danger of losing our American ideals and American notions, and it is high time that in the application of legislative remedies we should study and apply our American principles and develop our American institutions to meet and correct the evils which experience has discovered and exposed in the practical operation of our civil administration.

### Prevalent Evils in Popular Government.

I am not one of those who would deny that evils do exist—I know that evils exist. They exist because of the weakness, incompetency and venality of men who are intrusted with public authority and power. But when we think about it we know that there was never a rogue elected or re-elected to office, that it was not done by the voices or ballots of a majority or plurality of the people. I dare say that I have as lively a sense of the incompetence of some legislatures and judicial magistrates as would be warranted by the facts and actual experience. I have been up against some of these conditions. But because I may have a lively contempt for some legislators I do not therefore wish to abolish the legislature, nor do I wish to abolish the judicial office because I am deeply conscious of the vain superficialities and arrogance of some of those who occupy the bench as ministers of justice. Principles of justice and sound policy can have no efficacy in the state except as they are entertained in the minds of learned men. No others can estimate or apply them; and these are the functions of political, civil, and judicial magistrates. The remedy is not to abolish the office and function of the magistrate, but rather to find men who are worthy to perform these offices. And it is just here that popular government has displayed its weakest point, and that the right of election reserved to the people has been most faultily and carelessly exercised. Most of administrative evils are directly traceable to the failure of our popular elections to properly functionate for the purification of representative government. For the closest relation that is possible between government and the people is that the people shall ordain the government and that the people shall have their representatives administer it. It is the will of the state, and not the will of the people that must be supreme. The people may ordain and establish the state but when it is ordained, all the people are subject to it. The people may choose those who administer the affairs of the state, but these magistrates are to do the will of the state as defined

by the laws and not the will of the people other than that expounded in the laws. Republican government does not reach its most efficient and successful status unless the people choose their wisest and best men to positions of magistracy. That they frequently fail in this can not successfully be gainsaid.

### Representative Legislatures.

The agitation for the initiative and referendum has been promoted because of the failure of the people to choose trustworthy and wise men to exercise the functions of political magistrates. Pelatiah Webster, the author of the notable Dissertation on the Political Union and Constitution of the United States of North America, Philadelphia, 1783, was wise in his day when he said:

"The representatives appointed by popular elections are commonly not only the legal but real representatives of their electors, i. e., there will commonly be about the same proportion of grave, sound, well qualified men, trifling, desultory, men—wild or knavish schemers—and dull, ignorant fools in the delegated assembly as in the body of electors."

"In these assemblies are frequently to be found sanguine men, upright enough indeed, but of strong, wild projection, whose brains are always teeming with utopian, chimerical plans and political whims very destructive to society. I hardly know a greater evil than to have the supreme council of a nation played off on such men's wires; such baseless visions at best end in darkness, and the dance though easy and merry enough at first, rarely fails to plunge the credulous simple followers into sloughs and bogs at last.

"Nothing can tend more effectually to obviate these evils and to mortify and cure such maggotty brains than to see the absurdity of their projects exposed by the several arguments and keen satire which a full, emulous and spirited discussion of the subject will naturally produce. We have had enough of these geniuses in the short course of our politics both in our national and provincial councils, and have felt enough of their evil effects to induce us to wish for any good method to keep ourselves clear of them in the future. But if the people are fools enough to appoint men of trifling and vile characters, of mean abilities, faulty morals, or despicable ignorance, they must reap the fruits of such folly, and content themselves to have no weight, dignity or esteem in the public councils; and what is more to be lamented by the commonwealth, to do no good there."

## Function of the Legislator.

The function of the legislator is higher than that of the judge. The judge must be upright and learned to apply and interpret the law. It is a higher function to enact laws than to apply and interpret them, yet there are those who believe that this may be well done in a promiscuous assembly of the people or by ballot at a general election with no opportunity for discussion and exchange of views, for criticism, amendment and elaboration such as is required in the intelligent and efficient preparation and enactment of statutes. The qualifications of an efficient legislator are well stated by John Stuart Mill, when he says:

"There is hardly any kind of intellectual work which so much needs to be done, not only by experienced and exercised minds but by minds trained to the task through long and laborious study as the business of making laws."

No, the people can not successfully create constitutions and laws acting by masses. The people have not even shown such discretion and capacity in the choosing of magistrates as to show promise of capacity in the aggregate to prepare and enact laws. The people should learn to vote with some discrimination and judgment as to men before we begin seriously to talk of the abolition of representative legislatures and the preparation and enactment of laws at general popular elections. Our legislatures are filled now by popular election with men who can not draw a bill for a statute, and whose work is handed to them by outside people; who are influenced by the lobby and are incapable of exercising a sound and independent judgment. And they are elected by the people, and the fault is that of the people, and the one who directs attention to this fault does a greater public service than those who prefer to flatter the people for profit and power.

## Jefferson's Views on Democracy.

If there ever was a statesman who sincerely believed in the right of the people to ordain government, and to elect and hold responsible their public ministers, he was Thomas Jefferson; but he recognized the practical limitations upon the direct action of popular assemblies. Speaking of Aristotle and the ancient Republics, Jefferson said:

"They had just ideas of the value of personal liberty, but none at all of the structure of government best calculated to preserve it. They knew no medium between a Democracy (the only pure Republic, but impracticable beyond the limits of a town), and the abandonment of themselves to an autocracy, or a tyranny independent of the people. It seems not to have occurred, that when the citizens cannot meet to transact their business in person, they alone, have the right to choose the agents who shall transact it; and that in this way a Republican or popular government of the second grade of purity may be exercised over any extent of country. The full experiment of a government democratical but representative, was and is still reserved for us. \* \* \* \* \*

"My most earnest wish is to see the element of popular control pushed to the maximum of its practical exercise. I shall then believe that our government may be pure and perpetual.

"Such a government, (pure democracy), is evidently restrained to very narrow limits of space and population. I doubt if it would be practicable beyond the extent of a New England township." (August 26, 1816.)

"I suspect that the doctrine that small states alone are fitted to be republics will be exploded by experience with some other brilliant fallacies accredited by Montesquieu and other political writers." (February 6, 1795.)

"The equal rights of man, and the happiness of every individual are now acknowledged to be the only legitimate objects of government. Modern times have the signal advantage, too, of having discovered the only device by which these rights can be secured, to-wit: government by the people acting not in person, but by representatives, chosen by themselves, that is to say by every man of ripe years and sane mind, who either contributes by his purse or person to the support of his country. The small and imperfect mixture of representative government in England, impeded as it is by other branches, aristocratical and hereditary, shows yet the power of the representative principle toward improving the condition of men." (October 31, 1823.)

### Vitalization of Local Government.

One great need of today is the vitalization of local government, and the exercise by the people of more direct control over their local affairs. That the necessity of vitalizing local government is of long standing in America, is exemplified by this extract from a letter of Thomas Jefferson to Joseph C. Cabell, February 2, 1816:

"What has destroyed liberty and the right of man in every government which has ever existed under the sun? The generalizing and concentrating all cares into one body, no matter whether of the autocrats of Russia or France, or of the autocrats of a Venetian Senate. And I do believe that if the Almighty has not decreed that men shall never be free (and it is a blasphemy to believe it) that the secret will be found to be in the making himself the depository of the powers respecting himself so far as he is competent to them, and the delegating only what is beyond his competency by a synthetical process to higher and higher orders of functionaries so as to trust fewer and fewer powers in proportion as the trustees become more and more oligarchical. The elementary republics of the wards, the county republics, the state republics, and the Republic of the Union, would form a gradation of authorities, standing each on the basis of law, holding every one its delegated share of powers, and constituting truly a system of fundamental balances and checks for the government. When every man is a sharer in his ward republic, or of some of the higher ones, and feels that he is a participator in the government of affairs, not merely at an election one day in the year, but every day, when there shall not be a man in the state who will not be a member of some one of its councils, great or small, he will let the heart be torn out of his body, sooner than his power be wrested by a Cæsar or a Bonaparte. How powerfully did we feel the energy of this system in the case of embargo? I felt the foundations of the government shaken under my feet by the New England townships. There was not an individual in their states whose body was not thrown with all its momentum into action; and although the whole of the other states when known to be in favor of the measure, yet the organization of this little selfish minority enabled it to overrule the Union. What would the unwieldy counties of the Middle, the South and the West do? Call a county meeting and the drunken loungers at and about the courthouse would have collected and the distances being too great for the good people and the industrious generally to attend. The character of those who really met would have been the measure of the weight they would have had in the scale of public opinion. As Cato, then, concluded every speech with the

words, 'Carthage delenda est,' so do I every opinion with the injunction, 'divide the counties into wards.' Begin them only for a single purpose, they will soon show for what others they are the best instruments. God bless you and all our rulers, and give them the wisdom, as I am sure they have the will, to fortify us against the degeneracy of our government and the concentration of all its powers in the hands of the one, the few, the well born, or the many."

But as stated by Jefferson, our American precedent is the New England town meeting, and not the Swiss Initiative and Referendum. And this is the proper limit of the direct action of the people, and the field most needing their patriotic activities. For it must be said, that our municipal governments are perpetrating more flagrant abuses than state governments and functionaries exercising delegated powers. But this opens up a wide collateral field of discussion which may not be entered into at this time.

### Republican and Federal Principles.

However desirable direct popular rule may be, it is limited of necessity to local units. These local units constitute the republic of the state; and the federation of states, constitutes the federal Republic of the United States. So in order to effectually extend the democratic principle, we must employ the republican, or representative principle and the federal principle, and I may be permitted to say, that our structure of government will receive its greatest and most perfect development, if these basic ideas and principles are consistently recognized as lines along which our progress shall proceed. In no other way can our great and noble system of polity be developed into a harmonious, balanced and consistent whole and thus be realized the true nationalization of our government as conceived by Jefferson when he said:

"With respect to our state and federal governments, I do not think their relations correctly understood by foreigners. They generally suppose the former subordinate to the latter. But this is not the case. They are coordinate departments of one simple and integral whole."

Discussing the difference between the theory of democracy and its application in republican form, John Marshall, speaking of Washington, said:

"In speculation he was a real republican, devoted to the constitution of his country and to that system of equal and political rights on which it is founded. But between a balanced republic, and a democracy, the difference is like that between order and chaos. Real liberty he thought was to be preserved only by preserving the authority of the law, and maintaining the supremacy of the government. Scarcely did society present two characters which in his opinion less resembled each other than the patriot and the demagogue." (II Marshall's "Washington," p. 447.)

Democracy bears the same relation to liberal statesmanship, that pure mathematics does to practical engineering science. There is no liberal statesmanship which is not republican, which is but democracy in its applied form.

#### The Initiative and Referendum.

The argument against the initiative and referendum is the practical one that it is necessarily limited in its proper application to local units of government. There are those who protest that being a negation of the representative principle, it will destroy the republican form of government. I do not take quite so serious a view as this. Personally I rather think it a harmless, useless, and cumbersome scheme which through its inherent defects can not stand the test of practical utility in our government. It may prove to be of use in our cities and local governments, but this is the limit of its proper application. Even its proponents and advocates now say that it is not intended as a substitute for a representative legislature. It might be preferable to some legislatures we have known, but it certainly can never take the place of a wise, competent and patriotic legislature.

As to the initiative, our laws secure the right of petition. The Constitution of the United States provides that:

"Congress shall make no law abridging the right of the people peaceably to assemble and petition the government for a redress of grievances."

And the Constitution of Utah, as well as those of the American States generally, likewise provides:

"All men have the inherent and inalienable right to assemble peaceably, protest against wrongs, and petition for redress of grievances."

There is no practicable difficulty in the way of any citizen or body of citizens initiating legislation. Bills of all kinds, for all kinds of people are freely introduced into the legislature, and there is no scheme too visionary to receive a hearing, and sometimes, support.

As to the referendum, there is nothing in our present constitutions to prevent a reference of any political question to the vote of the electors for decision. But it is doubtful if there is any utility in such a course. Experience in Utah demonstrates that not to exceed twenty per cent of those who vote at any election give any attention to the matter of constitutional amendments or other questions referred to the vote of the people. Such proposed amendments receive little or no discussion prior to the election, and no such consideration is given to them as warrants the most ordinary matters of legislation being referred to popular vote. It were much better if our legislatures would show their capacity to efficiently exercise the legislative functions committed to them without indulgence in so much talk about referring everything to the vote of the people.

In Utah, at the general election of 1898, certain populists were elected to the legislature, and in deference to these populists, the legislature passed an act to submit an amendment to article 6, section 1, of the state constitution providing for the initiative and referendum. The amendment was voted on at the general election held November 6, 1900. For the electors of the President and Vice President, there were cast 93,175 ballots. For the Initiative and Referendum amendment there were 19,219 votes, and against the amendment there were 7,786 votes. The total number voting on the amendment was 27,005 votes. About one-fourth of those who voted at the elec-

tion voted on the amendment, and one-fifth of those who voted at the election, voted for the amendment. And thus it was ratified by one-fifth of the electors and became a part of the constitution. This a fair indication of public interest in matters referred to popular vote.

#### Limitations on the Application of Principles.

One great trouble with the agitator of these times is that he does not know the proper relation of principles of government nor the limitations for their practical application. Obsessed by a single idea, he forthwith expands it into a system for universal application. Even such a notable public man as ex-Governor Joseph W. Folk of Missouri, in his message to the legislature of Missouri, of January 2, 1907, advocated a memorial to Congress to call a convention to amend the Federal Constitution by incorporating into it the principles of the initiative and referendum. However, this proposition has now been abandoned by William J. Bryan, and other advocates of the initiative and referendum. In New Jersey, under the governorship of Woodrow Wilson, the Initiative and Referendum was applied only as a feature of the commission form of government for cities and towns. And this is the proper limit of its application. Personally I would not turn my hand over to prevent the well meaning people who want to experiment with it from a gratification of their desires. But in my view it will have no practical utility except as an adjunct to local government.

#### The Recall.

Now, as to the recall of public officials, it is believed that the first statement of this proposition was in the Articles of Confederation, (Philadelphia, November 15, 1777), in which it was provided that Congress should meet once a year on the first Monday in November, and that each

State reserved the power to recall its delegates or any of them within the year and to send others in their stead for the remainder of the year. Pelatiah Webster, discussing the provisions for the recall and the retirement of delegates after three years' service contained in the articles, made these salient observations:

"I have no objection to the States electing and recalling their delegates as often as they please, but I think it hard, and very injurious both to them and the Commonwealth, that they should be obliged to discontinue them after three years' service, if they find them on that trial to be men of sufficient integrity and abilities. A man of that experience is certainly much more qualified to serve in the place, than a new member of equally good character can be. It is experience that makes perfect in every kind of business—old and experienced statesmen of tried and approved integrity and ability are a great blessing to a state—they acquire great authority and esteem, as well as wisdom, and very much contribute to keep the system of government in good and salutary order; and this furnishes the strongest reason why they should be continued in the service, on Plato's great maxim, 'That the man best qualified to serve, ought to be appointed.'

"I am sorry to see a contrary maxim adopted in our American counsels; to make the highest reason that can be given for continuing a man in the public administration, assigned as a constitutional and absolute reason for turning him out, seems to me to be a solecism of a piece with many other reforms, by which we set out to surprise the world with our wisdom.

"If we should adopt this maxim in the common affairs of life, it would be found inconvenient, e. g., if we should make it a part of our Constitution, that a man who has served a three years' apprenticeship to the trade of a tailor or shoemaker, should be obliged to discontinue that business for the three successive years, I am of the opinion that the country would soon be cleared of good shoemakers and tailors. Men are no more born statesmen than shoemakers and tailors. Experience is equally necessary to perfection in both.

"It seems to me that a man's inducement to qualify himself for a public employment and make himself master of it, must be much discouraged by this consideration, that let him take whatsoever pains to qualify himself in the best manner, he must shortly be turned out, and, of course, it would be of more consequence to him to turn his attention to some other business which he might adopt when his present appointment should expire; and by this means the Commonwealth is in danger of losing the zeal, industry, and shining abilities as well as the services of their most accomplished and valuable men.

"I hear that the state of Georgia has improved on this blessed principle and limited the continuance of their governors in office to one year; the consequence is, that they have already the ghosts of many departed governors stalking about in every part of their state, growing more plentiful every year; and, as the price of everything is reduced by its plenty, I suppose governors will soon be very low there.

"This doctrine of rotation was first proposed by some sprightly geniuses of brilliant politics with this reason: that by introducing a rotation in the public offices, we should have a greater number of men trained up to public service, but it appears to me that it will be more likely to produce a great many jacks at all trades but good at none.

"I think that frequent elections are a sufficient security against the continuance of men in public office whose conduct is not approved, and there can be no reason for excluding those whose conduct is approved, and who are allowed to be better qualified than any men who can be found to supply their places."

I have quoted at length from Pelatiah Webster, because I have found him to be a profound thinker, and having spoken one hundred and twenty-five years ago, his words have added value, because they have been amply proven by subsequent political experience.

#### Recall of Judges.

Now, as to the recall of judges and of judicial decisions by the vote of the people, it need not be said that the mass of the people have not the training in the science of judiciary and jurisprudence whereby they may judicially determine questions of law. This is not an occasion to enlarge upon this question—suffice it to say, that men who are admitted to have been ardently devoted to the most complete exercise of popular rights have even doubted the sound policy of the people selecting judges, much less being themselves judges of the law in litigated cases. John Stuart Mill, who is recognized as one of the liberal writers on politics, says on this subject:

"Of all officers of government, those in whose appointment any participation of popular suffrage is the most objectionable are judicial

officers. While there are no functionaries whose special and professional qualifications the popular mind is less fitted to estimate, there are none in whose case absolute impartiality, and freedom from connection with politicians or sections of politicians, are of anything like equal importance. Some thinkers, among others Mr. Bentham, have been of opinion that, although it is better that judges should not be appointed by popular election, the people of their district ought to have the power after sufficient experience, of removing them from their trust. It can not be denied that the irremovability of any public officer to whom great interests are entrusted is in itself an evil. It is far from desirable that there should be no means of getting rid of a bad or incompetent judge, unless for such misconduct as he can be made to answer for in a criminal court, and that a functionary on whom so much depends should have the feeling of being free from responsibility except to opinion and his own conscience. The question, however, is whether, in the peculiar position of a judge, and supposing that all practicable securities had been taken for an honest appointment, irresponsibility, except to his own and the public conscience, has not, on the whole, less tendency to pervert his conduct than responsibility to the government or to a popular vote. Experience has long decided this point in the affirmative as regards responsibility to the executive, and the case is quite equally strong when the responsibility sought to be enforced is to the suffrages of electors. Among the good qualities of a popular constituency, those peculiarly incumbent upon a judge, calmness and impartiality, are not numbered. Happily, in that intervention of popular suffrage which is essential to freedom they are not the qualities required. Even the quality of justice, though necessary to all human beings, and therefore to all electors, is not the inducement which decides any popular election. Justice and impartiality are as little wanted for electing a member of parliament as they can be in any transaction of men. The electors have not to award something, which either candidate has a right to, nor to pass judgment on the general merits of competitors, but to declare which of them has most of their personal confidence, or best represents their political convictions. A judge is bound to treat his political friend, or the person best known to him, exactly as he treats other people; but it would be a breach of duty, as well as an absurdity if an elector did so. No argument can be grounded on the beneficial effect produced on judges, as on all other functionaries, by the moral jurisdiction of opinion; for even in this respect, that which really exercises a useful control over the proceedings of a judge, when fit for the judicial office, is not, (except sometimes in political cases) the opinion of the community generally, but that of the only public by whom his conduct or qualifications can be duly estimated, the bar of his own court. I must not be understood to say that the participation of the general public in the

administration of justice is of no importance; it is of the greatest; but, in what manner? By the actual discharge of a part of the judicial office in the capacity of jurymen. This is one of the few cases in politics in which it is better that the people should act directly and personally than through their representatives, being almost the only case in which the errors that a person exercising authority may commit, can be better borne than the consequences of making him responsible for them. If a judge could be removed from office by a popular vote, whoever was desirous of supplanting him would make capital for that purpose out of all his judicial decisions; would carry all of them, as far as he found practicable by irregular appeal before a public opinion wholly incompetent, for want of having heard the case or from having heard it without either the precautions, or the impartiality belonging to a judicial hearing; would play upon popular passion and prejudice where they existed, and take pains to arouse them where they did not. And in this, if the case were interesting, and he took sufficient trouble, he would infallibly be successful, unless the judge or his friends descended into the arena, and made equally powerful appeals on the other side. Judges would end by feeling that they risk their office upon every decision that they give, in a case susceptible of general interest, and that it was less essential for them to consider what decision was just, than what would be most applauded by the public, or would least admit of insidious misrepresentation. The practise introduced by some of the new revised state constitutions in America, of submitting judicial officers to periodical popular re-election, will be found, I apprehend, to be one of the most dangerous errors ever yet committed by democracy; and, were it not that the practical good sense which never totally deserts the people of the United States is said to be producing a reaction likely in no long time to lead to the retraction of the error, it might with reason be regarded as the first great downward step in the degeneration of modern democratic government."

#### Jefferson on the Judiciary.

Certainly no one can suspect Thomas Jefferson of a lack of confidence in the capacity of the people, yet it might create surprise in some quarters if the real views of Jefferson on the mode of electing the judiciary were more generally known. In his "Notes on Virginia," one of the earliest and most notable of Jefferson's publications, and upon which his early reputation as a sound politician largely rested, he expressed approval of the practise of Virginia in electing judges by the general assembly, and

not by the people. And in the evening of his life he retained the same opinion. As late as October 31, 1823, he wrote to Monsieur A. Coray:

"With us all the branches of the government are elective by the people themselves, except the Judiciary, of whose science and qualifications they are not competent judges."

One of Jefferson's first recorded opinions as to the office and functions of the judiciary is contained in a letter to George Wythe, written in July, 1776, at the very time when he drafted the Declaration of Independence:

"The dignity and stability of government in all its branches, the morals of the people and every blessing of society depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that—the Judges, therefore, should always be men of learning and experience in the law, of exemplary morals, great patience, calmness and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man, or body of men. To these ends they should hold their estates for life in their offices, or in other words, their commissions should be during good behavior, and then ascertained and established by law."

Writing from Paris, March 15, 1789, Jefferson further expressed himself upon the subject of the judicial power to enforce the Bill of Rights against repugnant legislation:

"In the arguments in favor of a declaration of rights, you omit one which has great weight with me; the legal check which it puts into the hands of the Judiciary. This is a body, which if rendered independent, and kept strictly to their own department, merits great confidence for their learning and integrity. In fact, what degree of confidence would be too much for a body composed of such men as Wythe, Blair, and Pendleton. On characters like these, the 'Civium ardor prava jubentium' would make no impression."

Further on this question, Jefferson wrote March 1, 1779, to George Wythe:

"I hope to see the time when elections of Judges of the Supreme Courts shall be restrained to the bars of the General Court, and High Court of Chancery; for when I speak of the former, I mean to in-

clude the latter. I should even in our present bill, have no objection to inserting such a restriction to take place seven or fourteen years hence."

To Archibald Stuart, under date of Philadelphia, December 23, 1791, Jefferson wrote:

"Render the Judiciary respectable by every possible means, to-wit, firm tenure in office, competent salaries and reduction of their numbers. Men of high learning and abilities are few in every country; and by taking in those who are not so the able part of the body have their hands tied by the unable. This branch of the government will have the weight of the conflict on their hands because they will be the last appeal of reason."

The recall of judges is the extreme form to which the recall is pushed by its advocates. It was only a more summary and savage application of the same idea which was exemplified in the recent assassination of Judge Massie by the Allens at Hillsville, Virginia.

#### Purpose of Frequent Elections.

It is a common fault of the times arising from ignorance of the evolution and functions of principles of government to grasp at superficial, chimerical and untried remedies with which to correct present evils rather than to effectually use the machinery which was primarily established for that very purpose, the functions of which it sometimes seems have been forgotten by the people.

The only purpose of our many elections is that the people may at regular and frequently recurring intervals inquire into the capacity and conduct of their public servants and remove them from, or return them to office as the public welfare may require. As expressed by Jefferson in a letter to Samuel Kercheval, July 12, 1816:

"For let it be agreed that a government is republican in proportion as every member composing it has his equal voice in the direction of its concerns (not indeed in person which would be impracticable beyond the limits of a city or small township) but by representatives chosen by himself, and responsible to him at short periods, and let us bring to the test of this canon every branch of our constitution."

The principle is thus stated by George Mason in the Virginia Bill of Rights:

"That the legislative and executive powers of the state should be separate from the judiciary; and that the members of the two first may be restrained from oppression by feeling and participating the burdens of the people, they should at fixed periods, be reduced to private station, return into that body from which they were originally taken, and the vacancies be supplied by certain, frequent, and regular elections in which all, or any part of the former members to be eligible or ineligible as the law shall direct."

#### Recall and Return.

Now, the purpose of frequent elections is not to provide for rotation in office nor to provide a great sporting event for the delectation of the public, but rather that the people may decide, at frequent intervals, whether those presently who hold office should be returned or recalled. And the perversion of our frequent elections from this function is precisely the primary cause of prevalent evils in the administration of our government. For, if the people can not and will not use judgment and care in the choosing of political, civil, and judicial magistrates, the people must suffer the consequences of their own default and dereliction. We surely have elections enough without adding recall elections to the regular elections. If the people would only vote at regular elections as they do at recall elections, that is, decide whether the men who presently exercise legislative, administrative, or judicial functions, should be recalled or returned, we would get the benefit of the judgment of the people and the best result possible from the popular exercise of the elective franchise. The people would then cease to be pawns to be played by partisan manipulators in the game of politics and would become real electors, that is to say, judges of the qualifications and worth of those whom they choose and select for public honor and service. Our public affairs suffer quite as much from the failure to return good men, as from the failure to recall bad men at the regular elections.

To quote again from Pelatiah Webster:

"For after all that can be done, I do not think that a good administration depends wholly on a good constitution and good laws; for insufficient or bad men will always make bad work and a bad administration, let the constitution and laws be ever so good. The management of able, faithful, and upright men alone can cause an administration to brighten, and the dignity and wisdom of an empire to rise into respect; make truth the line and measure of public decision; give weight and authority to the government, and security and peace to the subject."

Now, rational improvement and progress must commence on the basis of things as they are. Change should always be for the betterment of things as they are—otherwise, changes should not be deliberately made; and in politics, it is quite as necessary that the legislator know precisely what is the trouble and the function and nature of the part upon which the change and remedy is to operate, as it is that the surgeon should know his anatomy and just to what particular defect he is to direct the exercise of his science and skill. As calomel is a more efficient remedy for constipation than an abdominal plaster, so the vitalization and liberation of our elections will be more efficacious for the amelioration and rectification of our public affairs, than such superficial and temporizing expedients as initiatives, referenda, recalls, imperative mandates, and direct primaries.

#### Direct Primaries.

It is inconsistent with the liberty of the citizen, and the essential right of the people, or groups of the people, to freely assemble for the discussion of public policy and the formulation of programs for the political redress of grievances that the state should by so called direct primary, or other laws, unduly regulate or control the free action and conventions of associations, sects, or parties among the people. Political parties should rest upon the free conventions of the people who adhere to them, and

should not be subject to either the let or hindrance of the state. And it does not matter howsoever strong political parties become if only they rest upon the free conventions of the people and are not intrenched by special privileges and patronage conferred by law in the form of partisan election machinery, or otherwise.

If political parties desire to nominate candidates by ballot of their members rather than by conventions of delegates, that is their own business, and not the business of the government which should rather sedulously refuse to concern itself by either patronage or prevention, with factions, sects, or parties among the people. It should be the prime concern of the state to jealously guard and promote the freedom of elections, and it is improper and against public policy that the state should promote the permanent division of the people into rigid and unyielding parties such as results from the regulation of parties by statutes. When the state makes such rules and regulations, it gives parties official recognition and corporate standing, all of which is directly opposed to sound public policy.

#### Partisan Passion and Prejudice.

It is the partisan passion and prejudice that is precisely the greatest impediment to the freedom of elections in our country today. An elector who is in servitude to his passions and prejudices, is quite as unfitted to exercise free choice as if his will were subjected by the more palpable means of bribery or intimidation. Any interference with the free exercise of the elective franchise, is a perversion of representative government, and is particularly reprehensible when induced or aided directly, or indirectly by the laws of the state itself. President Jefferson in his first inaugural laid it down that one of the chief concerns of government should be a jealous care of the right of election by the people. And there can be no proper election unless it be a free election. We have become so

accustomed to political partisanship that we have come to think and believe that there is something sacred about political parties, and that care should be taken to perpetuate them for their own sake. And it is just this intense partisan servility that is the greatest asset of the partisan boss, and at once the source of the greatest evil in our public life today. The primary trouble is that the boss controls votes—not that he controls nominations. He does this by the party label. This is the trade-mark of the party boss, and direct primary laws, while they help the partisans to direct nominations, yet they tend to intensify and strengthen by sanction of law, the partisan spirit, which used by artful men to divide the people, prevents more than any other one thing the free and efficient exercise by the people of the elective franchise for the public good and welfare.

The solemn warning which Washington left as his legacy to the American people has all but been forgotten. In his farewell address is this admonition upon the baneful effects of party spirit:

"I have already intimated the danger of parties in the state with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects, of the spirit of party generally.

"This spirit is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled or repressed, but in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy. \* \* \* \* The alternate dominion of one faction over another, sharpened by the spirit of revenge, natural to party dissension, \* \* \* is itself a frightful despotism.

"The common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it. It serves only to distract the public counsels and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, fomenting occasionally riot and insurrection. \* \* \* \* There is an opinion that parties in free countries are useful checks upon the administration and serve to keep alive the

spirit of liberty. This within certain limits is probably true, and in governments of monarchical cast, patriotism may look with indulgence, if not with favor upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose, and there being constant danger of excess, the effort ought to be by the force of public opinion to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into flame, lest instead of warming it should consume. \* \* \* In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish. But if I may even flatter myself that they may be productive of some partial benefit, some occasional good, that they now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, to guard against the imposters of pretended patriotism, this will be a full recompense for the solicitude for your welfare by which they have been dictated." (Washington's Farewell Address, September 17, 1796.)

On another occasion Washington said:

"I was no party man myself, and the first wish of my heart was, if parties did exist, to reconcile them."

That extreme partisanship for its own sake obstructs progress and improvement, one may quote another respectable authority whose words are as true today as when they were written one hundred years ago. In his old age, John Adams wrote to Jefferson:

"I say parties and factions will not suffer or permit improvements to be made. As soon as one man hints at an improvement, his rival opposes it. No sooner has one party discovered or invented an amelioration of the condition of man or the order of society than the opposite party belies it, misconstrues it, ridicules it, insults it and persecutes it."

#### Parties for Public Service.

Now, I would not have you believe that I entertain the utopian idea that parties should be abolished—if it were possible. What I have said relates only to that par-

tisanship which exists for its own sake and not as an agency of public service. As long as the minds of men are free, they will associate together to promote common views and purposes. That is as it should be. I demand the right for myself and would accord all others the same privilege. Political leaders must have followers to make practical application of their opinions. These leaders or bosses always will in varying degree, direct or control partisan nominations for office. Let party leaders propose their nominees—that is all right. But let the people choose between the nominees as real electors should. Repeal laws which would interfere with the freedom of political parties, and repeal laws which would interfere with the freedom of election by the people by arranging machinery which practically induces the people to vote the partisan slate or ticket which some faction, party, or political sect has arranged in the hope that the voter is too idle or indifferent to exercise any independence of judgment or choice. The act of partisan nomination for office is not, nor can it well become an act of the people. The act of election, however, should be an act of the people, and to make it so in fact, every voter should be required to make up his own ticket and the ballot and election machinery should be adapted to this object. As to nominations, provide by law that every person presently occupying a ministerial or judicial office shall as a matter of course go on the official ballot as a candidate for re-election. As to platforms, the ministerial and judicial officer ought to have none other than the faithful keeping of his oath of office. He has nothing to do with politics. Politics and platforms are for the legislator. As to elections, make the frequently recurring regular elections, recall elections, and make them also return elections, whereby the people shall be induced to reward efficient public service by re-election term after term and punish infidelity in office by recalling unworthy officials. Promote consistency and stability in public affairs and policies by keeping worthy men in positions of trust, responsible how-

ever, at the frequent elections, to have their acts scrutinized by the people—all of which will promote a lively sense of responsibility to the people, rather than to partisan organizations and bosses which now receive the prime allegiance of too many of our public men. Permit freedom of nomination by political societies, groups, or parties under laws not less liberal than those which permit free popular conventions for this purpose, whether of electors or their delegates. Leave the matter of nomination by primary elections to the political parties themselves unless it becomes necessary to abolish all party nominations because of multiplicity of nominations—then have real primary elections under the direction of the government which shall not officially recognize parties or factions in any way, but shall be preliminary elections to reduce the number of candidates for the secondary or final election. Arrange the candidates regularly nominated on the official ballot in alphabetical order under the name of the office for which they are candidates and for the information of the voter, the party designation of the candidate may follow the name, so that the voter may give to the party affiliation whatever weight he desires. Require the voter to make up his own ticket by making his choice separately for each office to be filled so that it shall in fact be his ticket, to the end that the result of the election shall show the real consensus of the opinion of the people, and that the virtue, patriotism, and aspirations of the people may be reflected in the public administration by those whom they have chosen to exercise the functions of government.

#### Ballot Reform.

The form of the Massachusetts ballot meets all these requirements, and the adoption of this ballot would be more efficient for the elevation of party politics and nominations, and the restoration of our frequent elections to their proper function for the purification of representa-

tive government, than any other single legislative measure that could be enacted. If the people have not sufficient time to properly and deliberately mark the ballot in the election booth, the official ballots should be distributed to the voters before election day so that they could mark them in the privacy of their homes or offices. If a citizen is fit to exercise the elective franchise, he is fit to be trusted to make up his ticket in his own way, and to have time and occasion deliberately to do so as he would attend to any other weighty matter of business.

The Massachusetts ballot has received the commendation of sound thinkers on contemporary political problems. Governor Charles E. Hughes, now one of the justices of the Supreme Court of the United States, in a message to the legislature of New York in 1907, strongly urged the Massachusetts ballot for adoption in that state in these words:

"It is objectionable that any candidate should have more than one place on the ballot. This leads to flagrant abuses in efforts to obtain endorsements for the purposes of securing a place in more than one column.

"It is not impossible to have a simple form of ballot which will put parties, candidates and voters respectively, on an entirely equal footing. I believe that the best form of ballot is that in which the names of the candidates for the respective offices appear but once, grouped under the names of the offices. I recommend that such a ballot, with appropriate designation of party, opposite the candidate's name should be adopted. The fact that we are accustomed to another form of ballot in New York has given rise to objections which experience in other states has shown to be without weight.

"The argument in favor of the party column is that a voter who wishes to vote a straight ticket should have the opportunity of doing so with the minimum of inconvenience. But the straight voter has no inherent right to a preference, and his constitutional privilege is satisfied if he is allowed freely and secretly to vote by ballot for his candidate. The question whether he should be permitted to vote by one mark for all the candidates in a party column is not simply one of his convenience, but depends for its answer on broad considerations of public policy. His convenience is outweighed by the fact that the party column facilitates carelessness in voting and en-

courages the nomination of inferior candidates for minor offices, who rely for their success upon the strength of other candidates on the same ticket. It is wholesome that the voter should be required to express his preference with reference to each office, and it is desirable that each party should be stimulated to additional care in its nominations, particularly for minor offices, because the candidates are to be submitted to this test. It is also important to make the count as simple and easy as possible. No question of party expediency is involved, as all parties are treated alike."

Governor Joseph W. Folk, in his message to the legislature of Missouri, January 12, 1907, said on this subject:

"After a careful inspection of the election laws of the various states, I have come to the conclusion that a law such as the Massachusetts ballot law, whereby all names are placed on the ballot, one under the other, with the proper party designation after each name, and the voter must designate by a mark the person he desires to vote for, would be in the interest of government by the people. This would prevent careless voting, and prohibit ignorant voting. It would insure intelligent voting, and be a barrier against corrupt men being voted for carelessly or unintentionally."

#### Adjustment and Reform.

What we need today is not ill-considered reform, but rather a careful and scientific adjustment of the machinery of government for the correction of prevalent evils. As relates to the fundamentally important function of the election, this will be best obtained by making the frequent regular elections recall elections; and by the correction of the form of the ballot so that the election returns shall represent the free, patriotic, and honest judgment of the people so far as it can be accomplished by law. The great majority of the people take no part in the nomination of persons for office, and should therefore be made to realize their freedom and duty to judiciously elect and choose between the candidates for office. The state is entitled to this from those to whom it gives the elective franchise.

In dealing with government, we must not forget that

we are dealing with a human institution, for the regulation of human nature, conduct and character, and that the science of government is an experimental science, the proper laws of which have been learned only by experience. No one who makes any profession to statesmanship, and ignores the lessons of political experience, is worthy of the name of statesman.

As put by President Woodrow Wilson before a recent meeting of the American Bar Association:

"The times demand, too, of our profession, more cultivation of the taste for history. A counterbalance against the hasty pressure for reform, and against an over-absorption in the narrow experience of the present, is to be sought in the solid influence of history. A true conservatism and an intelligent progress, must alike be based on historical knowledge—a knowledge not remaining in the possession of a few scholars, but penetrating abroad into the general consciousness of the profession."

In conclusion, I desire to quote again from Pelatiah Webster:

"I know that the supreme authorities are liable to err as well as subordinate ones. I know that courts may be in the wrong as well as the people; such is the imperfect state of human nature in all ranks and degrees of men. But we must take human nature as it is—it can not be mended—and we are compelled both by wisdom and necessity to adopt such methods as promise the greatest obtainable good, though perhaps not the greatest possible, and such as are liable to the fewest inconveniences though not altogether free of them."

To which I would add the words of George Mason, in the Virginia Bill of Rights:

"That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles."

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